

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	
	:	
WILLIAM J. BOSACK,	:	Bankruptcy No. 10-27495-BM
	:	
Debtor.	:	Chapter 7
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James R. Walsh, Chapter 7 Trustee,	:	
Movant,	:	
	:	
v.	:	Related to Doc. No. 25
	:	
William J. Bosack,	:	
Respondent.	:	
	:	
Appearances:		Roger P. Poorman, for the Chapter 7 Trustee.
		Robert O. Lampl, for William J. Bosack.

MEMORANDUM OPINION

James Walsh, the Chapter 7 Trustee for the above-captioned debtor (hereafter “the Trustee”), objects to the amended exemption that William Bosack, such debtor (hereafter “the Debtor”), has taken in monthly commissions that the Debtor continues to receive post-petition. The Court held a trial on the Trustee’s exemption objection on April 25, 2011. The parties subsequently filed post-trial briefs.

After considering the positions of both parties, as well as the evidence produced at trial, the Court sustains the Trustee’s exemption objection. However, as set forth below, the Court determines that a relatively small percentage of such commissions are attributable to the post-petition efforts of the Debtor. Such relatively small percentage, therefore, does not constitute property of the Debtor’s bankruptcy estate, and may not be utilized to pay pre-petition

creditors of the Debtor. The balance of such commissions constitutes bankruptcy estate property, none of which may be exempted by the Debtor and, thus, all of which may be utilized by the Trustee to pay pre-petition creditors of the Debtor.

STATEMENT OF FACTS

On February 20, 2010, the Debtor and Glacial Energy of Pa, Inc. (hereafter “Glacial”) executed a document entitled “Glacial Energy Agent Agreement” (hereafter “the Agent Agreement”). Under the Agent Agreement, the Debtor was – and presently remains – engaged by Glacial to solicit customers to purchase their electric utility service from Glacial. According to the Agent Agreement, the Debtor’s compensation thereunder is to consist of monthly commissions based on the electric usage of those customers of the Debtor who ultimately enter into electric utility service contracts with Glacial. The Debtor is entitled to continue to receive such commissions for as long as his customers continue to purchase and pay for electric service through Glacial (hereafter the “Residual Commissions”).

According to paragraph 4 of the Agent Agreement, Glacial is obligated to pay Residual Commissions to the Debtor even if Glacial fails to extend the Agent Agreement beyond its initial one-year term. However, such paragraph 4 also reveals that Glacial may cease paying Residual Commissions to the Debtor if the Debtor “has been terminated for cause due to material breach of th[e Agent A]greement.” According to paragraph 6 of the Agent Agreement, it “may be terminated immediately by either Party at its sole option if the other Party fails to

perform any material duty, obligation, covenant and agreement and such default continues longer than ten (10) days.” Paragraph 1 of the Agent Agreement reflects that, among the Debtor’s responsibilities under such agreement, are that the Debtor “work diligently on behalf of Customers to successfully resolve with Glacial Energy, as efficiently as possible, any disputes arising under ... [the Debtor’s] Customer Contracts and any issues that may arise as part of the customer support process.”

According to documentation that the Debtor testified he personally prepared just prior to trial, he successfully negotiated, executed, and submitted to Glacial seventeen (17) different customer contracts (hereafter the “Customer Contract(s)”) during the period from May 20, 2010, through September 28, 2010. The Debtor testified that he executed one additional Customer Contract in January 2011.

Paragraph 7 of the Agent Agreement states that “[t]he Parties’ relationship to each other in the performance of this Agreement is that of independent contractor. Nothing in this Agreement is intended to imply a joint venture, partnership, association[,] principal-Agent, ... fiduciary, or employer-employee relationship between Glacial Energy and” the Debtor.” In connection with the Debtor’s receipt of the Residual Commissions in 2010, he received a Federal Income Tax Form 1099-MISC that reflected that (a) he earned \$11,687.23 in “Nonemployee compensation” for such year, and (b) no federal income tax was withheld from such compensation.

Between July 2010 and October 2010 the Debtor, in addition to his

independent contractor arrangement with Glacial, occupied a salaried employee position with Glacial, for which he earned in excess of \$4,000 per month. The Debtor received a 2010 Federal Income Tax Form W-2 in connection with such employment.

The Debtor is presently employed on a full-time, 40 hour/week basis with First Choice Loan Services, Inc. (hereafter "First Choice"), where he has been so employed for the past one and one-half years. In addition to such full-time employment, the Debtor testified that he devotes between one to three hours per week to continue to service the Customer Contracts. The Debtor is a college graduate who formerly owned and operated his own mortgage brokerage business.

On October 21, 2010, the Debtor commenced the instant Chapter 7 bankruptcy case. Just weeks prior to that the Debtor learned that his salaried employee position with Glacial would be terminated at the end of October 2010; such employment actually was terminated at such date. However, the Debtor did not commence the instant bankruptcy case on an emergency basis, which is evidenced by the fact that he (a) filed all of his bankruptcy schedules at the same time that he filed the bankruptcy petition, and (b) completed the required pre-bankruptcy credit counseling course on August 26, 2010, which date is almost two months before when he commenced the instant case.

Even though the Debtor did not commence the instant case on an emergency basis, he failed to disclose any information regarding either his employment or his independent contractor arrangement with Glacial in any of his

originally-filed Bankruptcy Schedules, or in response to Questions 1 and 2 in his originally-filed Statement of Financial Affairs. Despite the fact that the Debtor failed to so disclose any such information regarding income that he earned from Glacial, he (a) signed his bankruptcy petition, the declarations concerning his Bankruptcy Schedules and his Statement of Financial Affairs, and his Declaration Re: Electronic Filing of Petition, Schedules & Statements, (b) testified that he personally reviewed all of the documentation that was filed regarding his bankruptcy case, and (c) conceded that he understood that, by signing the documentation that was filed with the Court, he was thereby declaring under penalty of perjury that the information provided therein was true and accurate to the best of his knowledge.

In November and December 2010 the Debtor received Residual Commissions of, respectively, \$1,301.60 and \$1,201.60. Despite receiving such Residual Commissions, the Debtor at that time neither amended his Bankruptcy Schedules and Statement of Financial Affairs nor notified anyone that he had received such money. Instead, the Debtor converted such Residual Commissions to his own use.

On January 7, 2011, the Debtor's § 341 Meeting of Creditors was held. It was not until such meeting that the Debtor first disclosed to the Trustee that he had received, and would continue to receive, the Residual Commissions. The Debtor maintains that he volunteered such information regarding the Residual Commissions at such meeting, and that his failure to disclose the same earlier either in his Bankruptcy Schedules and Statement of Financial Affairs or

otherwise was simply the result of an honest mistake. However, the Debtor did not volunteer such information prior to, or at the commencement of such meeting; instead, the Debtor disclosed such information only after being asked at such meeting by the Trustee whether he was receiving any income other than from his current employment with First Choice.

On January 28, 2011, the Debtor amended his Bankruptcy Schedule B to disclose that he possessed the right to receive Residual Commissions approximating \$1,200 per month. No mention in such schedule is made of the Residual Commissions that he received and spent in the months of November and December 2010, or Residual Commissions of \$1,015.98 that he received in January 2011. With respect to the January 2011 Residual Commissions, the Debtor spent the same (a) even though he received them after the conclusion of the § 341 Meeting, (b) without receiving permission to so spend from either the Trustee or the Court, and (c) without disclosing the amount thereof in his Bankruptcy Schedule B. The Debtor has never bothered to amend the responses to Questions 1 and 2 in his Statement of Financial Affairs to reflect his receipt of either the Residual Commissions or his employment in 2010 with Glacial. On January 28, 2011, the Debtor also amended his Bankruptcy Schedule C so as to exempt in full the Residual Commissions pursuant to 42 Pa.C.S.A. § 8127.

Beginning with February 2011 the Residual Commissions have been paid directly to the Trustee, who has then been holding them in escrow pending this Court's decision in the instant matter. The Trustee has received Residual

Commissions totalling \$3,526.36 for the months of February 2011 – April 2011.

According to the Trustee, the post-January 2011 Residual Commissions are presently the only assets that exist and that would be available to make any distribution to the Debtor's pre-petition unsecured creditors. According to the Debtor's Bankruptcy Schedules D and F, the Debtor has a total of \$1,297,770 in pre-petition unsecured indebtedness.¹

DISCUSSION

The Debtor has elected to take the exemptions available to him under 11 U.S.C. § 522(b)(3), that is essentially Pennsylvania state exemptions and the property that he owns with his nondebtor wife as a tenant by the entirety. The Debtor maintains that he may exempt all of the Residual Commissions pursuant to 42 Pa.C.S.A. § 8127. The Trustee disagrees, contending that § 8127 does not operate to exempt the Residual Commissions. The Trustee also objects to the Debtor's exemption of the Residual Commissions on the ground that the Debtor intentionally concealed the same from the Trustee. With respect to the latter position of the Trustee, the Debtor contends that it was only by accident that he failed to disclose the Residual Commissions.

Finally, but actually as a threshold matter, the Debtor contends that, because he performed significant post-petition services on the Customer Contracts, and since such contracts could be cancelled by his customers at any

¹The Debtor's Schedule F reveals that the Debtor has \$937,884 in pre-petition unsecured debt. The Debtor's Schedule D indicates that he has pre-petition secured debt equal to \$618,581.25, but that \$258,695.25 of such amount is actually unsecured because the value of the collateral is insufficient to cover the entirety of the debt which it secures.

time, none of the Residual Commissions constitute property of his bankruptcy estate; instead, such commissions, according to the Debtor, constitute his post-petition earnings which are shielded from his bankruptcy estate pursuant to 11 U.S.C. § 541(a)(6). The Trustee contends otherwise, arguing that, because the Residual Commissions are substantially, if not entirely, rooted in the Debtor's pre-petition activities, and since the payment of such commissions is dependent only upon his customers' continued payment for the purchase of electricity from Glacial, the entirety of such commissions constitute property of the Debtor's bankruptcy estate.

I. Whether the Residual Commissions constitute property of the Debtor's bankruptcy estate?

Because the issue of whether the Debtor can exempt the Residual Commissions only becomes relevant if such commissions constitute property of his bankruptcy estate, the Court shall address first whether the Residual Commissions are property of the Debtor's bankruptcy estate. The "Trustee, [essentially] as plaintiff [herein], has the burden of proof on his claim" that the Residual Commissions constitute bankruptcy estate property. In re Dunn, 436 B.R. 744, 747 (Bankr.M.D.Ga. 2010). "The preponderance of [the] evidence standard applies to this [portion of the] proceeding." Id.

At the outset, the Court holds that any Residual Commission that the Debtor has received or will receive respective of the Customer Contract that the Debtor executed in January 2011 (hereafter "the January 2011 Customer Contract") cannot constitute property of his bankruptcy estate. The Court so

holds because (a) January 2011 is several months post-petition, (b) the Debtor did not accrue a contractual right to receive any commission respective of the January 2011 Customer Contract prior to its execution in January 2011, and (c) any such commission was thus earned wholly post-petition, meaning that it would constitute post-petition income of the Debtor that is shielded from his bankruptcy estate pursuant to § 541(a)(6). Going forward, and for the same reason just set forth with respect to the January 2011 Customer Contract, any Residual Commission that pertains to any Customer Contract that the Debtor might execute in the future also will not constitute a part of his bankruptcy estate.

With respect to those Customer Contracts that were executed pre-petition (which the Court understands to number 17 in all and which the Court will hereafter refer to as “the 17 Customer Contracts”), the Court holds first that, if, as the Trustee argues, the payment of the Residual Commissions respective thereof (hereafter “the 17 Contract Residual Commissions”) is dependent only upon the Debtor’s customers’ continued payment for the purchase of electricity from Glacial, then the entirety of such commissions constitute bankruptcy estate property. That is because (a) “commissions earned wholly prepetition, but paid postpetition, become in their entirety property of the [bankruptcy] estate,” In re Golde, 253 B.R. 843, 846 (Bankr.N.D.Ohio 2000), and (b) commissions are earned wholly prepetition if “all the work necessary to earn the commission has occurred prepetition,” Id.; see also In re Carey, 150 B.R. 196, 199 (Bankr.N.D.Ohio 1992) (plan funds were earned wholly pre-petition and, thus, constituted bankruptcy estate property because the “[d]ebtor [therein] need not

perform any further services to be entitled to payment of at least some of these funds").

Having so held, however, the Court next holds that payment of the 17 Contract Residual Commissions, rather than being entirely dependent upon the Debtor's customers' continued payment for the purchase of electricity from Glacial, is instead also partly dependent upon the Debtor's future performance of services regarding the 17 Customer Contracts. The Court so holds because, as set forth above, according to the Agent Agreement, (a) Glacial may cease paying Residual Commissions to the Debtor if he is terminated for cause due to a material breach of such agreement, (b) Glacial may terminate such agreement immediately at its sole option if the Debtor fails to perform any material duty, obligation, or covenant of such agreement and such default continues for longer than ten days, and (c) one such material duty or obligation of the Debtor under such agreement is that he work on behalf of his customers to successfully resolve with Glacial Energy any disputes that might arise under the Customer Contracts, as well as any issues that may arise as part of the customer support process. Therefore, the 17 Contract Residual Commissions have both a prepetition component and a post-petition component. Consequently, "the postpetition earnings exception contained in § 541(a)(6) is at least to a certain extent applicable to ... [such] commissions." Golde, 253 B.R. at 847.

There presently exists what can be characterized as a split of authority as to how ... commissions, having both prepetition and postpetition components, are to be handled for purposes of

§ 541(a)(6). The first group of cases ... holds that where the debtor must perform any postpetition services to become entitled to a ... commission, that such a commission is [entirely] encompassed within the earnings exception contained in § 541(a)(6), and therefore does not become property of a debtor's bankruptcy estate.

Id. (citations omitted); see also In re Bagen, 186 B.R. 824, 828 (Bankr.S.D.N.Y. 1995) (citing similar line of cases). The Golde court then turned to the decision in In re Wu for a description of how the second line of cases deals with commissions that have both a pre-petition component and a post-petition component. The Wu court held that:

The proper analysis ... is to first determine whether any postpetition services are necessary to obtaining the payments at issue. If not, the payments are entirely rooted in the pre-bankruptcy past, and the payments will be included in the estate. If some postpetition services are necessary, then courts must determine the extent to which the payments are attributable to the postpetition services and the extent to which the payments are attributable to prepetition services. That portion of the payments allocable to postpetition services will not be property of the estate. That portion of the payments allocable to prepetition services or property will be property of the estate.

In re Wu, 173 B.R. 411, 414-15 (B.A.P. 9th Cir. 1994) (internal quotations and

citations omitted) (quoted in Golde, 253 B.R. at 848).

This Court determines that the approach set forth in Wu is the appropriate one for dealing with commissions that have both a pre-petition component and a post-petition component and, thus, the Court adopts such approach. This Court finds that the approach in Wu is appropriate for precisely the reasons that the Golde court also adopted such approach, to wit:

the holding contained in In re Wu is more in line with the distinction the Bankruptcy Code makes between prepetition and postpetition property. In particular, it is this Court's position that merely because a debtor has to perform a postpetition service to become entitled to an item of property, does not thereby mean that such property does not have prepetition attributes which become property of the estate under § 541(a). Stated differently, payments for prepetition services are not excludable from the estate simply because postpetition services are required to receive payment. Moreover, in this Court's opinion, apportioning property between its prepetition and postpetition components strikes the proper balance of assuring that any prepetition resources that a debtor has available are used to pay his or her creditors, while at the same time ensuring that the "fresh start" policy underlying the Bankruptcy Code is furthered.

Golde, 253 B.R. at 848 (citations omitted); see also Bagen, 186 B.R. at 829 (holding in a fashion identical to the decisions in Wu and Golde).

Having adopted the apportionment method of dealing with commissions

that have both a pre-petition component and a post-petition component, the Court must next apportion the 17 Contract Residual Commissions between their pre-petition and post-petition components. “[M]aking any apportionment [is] by its very nature speculative,” Golde, 253 B.R. at 848, “and an apportionment may be difficult in some cases,” In re Malloy, 2 B.R. 674, 676-77 (Bankr.M.D.Fla. 1980). However, the Court finds a fair and reasonable apportionment of the 17 Contract Residual Commissions to be that 93% thereof is attributable to the Debtor’s pre-petition services and 7% thereof is allocable to his post-petition services. The Court arrives at such apportionment, in part, because (a) it finds that the 17 Contract Residual Commissions’ value is overwhelmingly attributable to the origination of the 17 Customer Contracts, which origination occurred entirely pre-petition, and (b) the Trustee, who has the burden of preponderantly proving that such commissions constitute bankruptcy estate property, has thus preponderantly proven that 93% of such commissions are allocable to the Debtor’s pre-petition services. The Court attributes 7% of the 17 Contract Residual Commissions to the Debtor’s post-petition services because (a) the Debtor testified at trial that he spends up to three hours a week post-petition servicing the 17 Customer Contracts, (b) the Trustee failed to preponderantly refute such testimony, (c) the Court will thus accept that the Debtor spends 3 hours per week post-petition servicing such contracts, (d) the Debtor also testified at trial that he works precisely 40 hours per week in his present full-time post-petition capacity with First Choice, (e) 3 hours divided by a total of 43 hours (i.e., 40 hrs. + 3 hrs.) yields a ratio of 7%, and (f) the Debtor thus spends

approximately 7% of his post-petition workweek servicing such contracts. See Malloy, 2 B.R. at 677 (the Malloy court employed a similar apportionment scheme).

Therefore, 93% of any of the 17 Contract Residual Commissions constitutes bankruptcy estate property. The remaining 7% thereof constitutes post-petition income of the Debtor that is shielded from his bankruptcy estate pursuant to § 541(a)(6).

II. Whether the Debtor can exempt that portion of the Residual Commissions that constitutes bankruptcy estate property?

Having determined that 93% of any of the 17 Contract Residual Commissions constitutes bankruptcy estate property, the Court must next ascertain whether the Debtor can exempt all or some portion of the same. For the reasons set forth below, the Court holds that the Debtor cannot exempt any portion of such 93% of the 17 Contract Residual Commissions.

First, the sole vehicle by which the Debtor attempts to exempt that portion of the 17 Contract Residual Commissions that is bankruptcy estate property is 42 Pa.C.S.A. § 8127. The portion of § 8127 that is pertinent to the instant matter provides that “[t]he wages, salaries and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process.” 42 Pa.C.S.A. § 8127(a) (Purdon’s 2011). Such statutory provision, by its express terms, only applies if and when funds owed to an individual are held by such individual’s employer. Therefore, and as a corollary of the preceding point, such statutory provision will not apply if and when funds owed to an

individual are held by someone other than such individual's employer. Based upon the foregoing, and as a matter of law, such statutory provision has no application when an individual works for another as an independent contractor because, in such event, the person or entity for whom such individual works is not, indeed cannot be, such individual's employer. See Houston-Starr Company v. Davenport, 324 A.2d 495, 496 (Pa.Super.Ct. 1974); Huck-Gerhardt Co., Inc. v. Davies, 3 A.2d 963, 965-66 (Pa.Super.Ct. 1939).

Unfortunately for the Debtor, the Court finds, and quite comfortably, that the Debtor's capacity is that of an independent contractor when he sells Customer Contracts and thereby earns Residual Commissions. Paragraph 7 of the Agent Agreement clearly states as much, as well as that Glacial is not the Debtor's employer if and when the Debtor sells Customer Contracts and earns Residual Commissions. The tax treatment that the Debtor and Glacial accorded to such arrangement also evidences that Glacial was not the Debtor's employer, and that the Debtor operated as an independent contractor, when the two did business within the confines of such arrangement. Consequently, the Debtor cannot utilize § 8127 to exempt any part of the 93% of the 17 Contract Residual Commissions that constitutes bankruptcy estate property.

Second, debtors in bankruptcy, as a matter of law, will be barred from claiming bankruptcy estate property as exempt if they are found, by a preponderance of the evidence, to have intentionally concealed or failed to disclose bankruptcy estate property, see In re Nicholson, 435 B.R. 622, 631-34 (B.A.P. 9th Cir. 2010); In re Rolland, 317 B.R. 402, 414-15 (Bankr.C.D.Cal.

2004); In re Jones, 446 B.R. 466, 474 (Bankr.D.Kan. 2011); In re Varney, 449 B.R. 411, 418 (Bankr.D.Idaho 2011); In re Wood, 291 B.R. 219, 226 (B.A.P. 1st Cir. 2003).² The Court holds that the Trustee has preponderantly proven that the Debtor intentionally concealed and/or failed to disclose the 17 Contract Residual Commissions when he filed for bankruptcy protection and for more than two months thereafter, or during the period between October 21, 2010 (when the Debtor filed for bankruptcy), and January 7, 2011 (when the Debtor's § 341 Meeting of Creditors was held). Therefore, it really matters not whether the Debtor could exempt via § 8127 any part of the 93% of the 17 Contract Residual Commissions that constitutes bankruptcy estate property because, even if he could do so, he is barred from doing so by virtue of his having intentionally concealed and/or failed to disclose such commissions during a significant portion of the bankruptcy process.

The Court finds that the Debtor so intentionally concealed and/or failed to disclose, rather than simply forgot about, the 17 Contract Residual Commissions for several reasons. First, the Court does not believe that the Debtor innocently forgot about such commissions when he failed to originally disclose them in his bankruptcy schedules that were filed on October 21, 2010, because, as the Court

²"Courts are split over the question of whether bad faith [of a debtor in an exemption proceeding] ... must be established by a preponderance of the evidence or by clear and convincing evidence." Rolland, 317 B.R. at 415 n.19 (citing the decision in In re Yonikus, 996 F.2d 866, 872 (7th Cir. 1993), which decision is among those relied upon in the instant matter by the Trustee, as one wherein the clear and convincing evidence standard was adopted). This Court adopts a preponderance of the evidence as the proper standard of proof when one objects to a debtor's exemption, and the Court so rules for precisely the same reasons that are set forth by many of the other courts that likewise adopt such standard of proof in exemption proceedings. See Nicholson, 435 B.R. at 631-34; Rolland, 317 B.R. at 415 n.19; In re Ford, 492 F.3d 1148, 1154-55 (10th Cir. 2007); In re Daniels, 270 B.R. 417, 422 n.2 (Bankr.E.D.Mich. 2001).

understands it, he was then receiving such commissions and had been for a period of time leading up to October 2010. Second, the Court finds it hard to believe that the Debtor would have also honestly forgot to disclose on October 21, 2010, any information regarding his employment with Glacial, especially given that such employment was terminated just weeks before October 21, 2010. Third, the Court cannot accept that, for the entire period between October 21, 2010, and January 7, 2011, the Debtor just innocently forgot about such commissions and his right to continue to receive them, particularly since at the same time he was spending such commissions that he received for the months of November and December 2010. Fourth, the Court cannot find that it was an innocent oversight on the Debtor's part when, for the entirety of such period, he failed either to amend his bankruptcy schedules or to notify the Trustee that he had received, and would continue to receive, such commissions; the same goes for the Debtor's failure during such time to amend his schedules or to notify the Trustee regarding his employment relationship with Glacial during 2010.³

Finally, the Court is simply taken aback by the fact that (a) the Debtor, after having finally divulged to the Trustee the existence of the 17 Contract Residual Commissions on January 7, 2011, nevertheless proceeded subsequently, without any permission, to spend such commission that he received for the month of January 2011, (b) he would not have voluntarily paid

³The Court also holds that, because the evidence is so overwhelming in support of a finding that the Debtor intentionally concealed and/or failed to disclose the 17 Contract Residual Commissions, the Court would be compelled to rule as it does even if the appropriate standard of proof was the clear and convincing evidence standard.

back – or at least offered to pay back – to the bankruptcy estate all of such commissions that he received and then spent post-petition, to then be held in escrow pending the outcome of the instant matter, and (c) he has not yet amended the responses to Questions 1 and 2 in his Statement of Financial Affairs to reflect his receipt of either the Residual Commissions or his employment in 2010 with Glacial.

For all of the foregoing reasons, the Debtor's exemption of the Residual Commissions that constitute bankruptcy estate property, that is 93% of any of the 17 Contract Residual Commissions, is denied; therefore, the Trustee's objection to such exemption is sustained.

CONCLUSION

For all of the foregoing reasons, the Court sustains in part and overrules in part the Trustee's exemption objection.

In particular, any Residual Commission that the Debtor has received or will receive respective of the January 2011 Customer Contract cannot constitute property of his bankruptcy estate. As well, 7% of any of the 17 Contract Residual Commissions does not constitute bankruptcy estate property. With respect to the property just mentioned that has been determined not to constitute bankruptcy estate property, the Trustee's exemption objection is necessarily overruled.

However, the remaining 93% of any of the 17 Contract Residual Commissions constitutes bankruptcy estate property, for which property the Trustee's exemption objection is sustained, that is the Debtor cannot exempt such property. Furthermore, because 93% of the \$2,503.20 worth of Residual

Commissions that the Debtor received in, and retained from, November and December 2010 constitutes bankruptcy estate property which the Debtor has unjustifiably converted to his own use, the Debtor shall be directed to immediately deliver to the Trustee cash equal to \$2,327.98. Likewise, the Debtor shall be directed to immediately hand over to the Trustee cash equal to 93% of that portion of the \$1,015.98 in Residual Commissions that he received in, and retained from, January 2011, that is not attributable to the January 2011 Customer Contract.

BY THE COURT

/s/
**BERNARD MARKOVITZ,
U.S. Bankruptcy Judge**

DATED: August 8, 2011

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: :
WILLIAM J. BOSACK, : Bankruptcy No. 10-27495-BM
Debtor. : Chapter 7
.....
James R. Walsh, Chapter 7 Trustee, :
Movant,
v. : Related to Doc. No. 25
William J. Bosack, :
Respondent. :

ORDER OF COURT

AND NOW, this **8th day of August, 2011**, for the reasons, and utilizing the nomenclature, set forth in the accompanying Memorandum Opinion of the same date; it is **hereby ORDERED, ADJUDGED, AND DECREED** that:

- (a) the Trustee's exemption objection is sustained in part and overruled in part, consistent with the details as expressed in the Conclusion to the accompanying Memorandum Opinion of the same date; and
- (b) the Debtor is directed to immediately deliver to the Trustee cash equal to \$2,327.98, plus 93% of that portion of the \$1,015.98 in Residual Commissions that he received in, and retained from, January 2011, that is not attributable to the January 2011 Customer Contract – should the Debtor promptly comply with this particular directive from the Court, then

the Court will not transmit this portion of the instant matter to the U.S. Trustee for noncivil action.

BY THE COURT

/s/
**BERNARD MARKOVITZ,
U.S. Bankruptcy Judge**

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